

**Regulations Governing the
Local Housing Trust Fund Program
Commencing with Sections
7150, 7151, 7152, 7153, 7154, 7155,
7156, 7157, 7158, 7159, and 7160**

Responses to Comments

Commenter: **Coachella Valley Association of Governments (CVAG)**

CVAG #1: Supportive of HCD's regulatory effort. – No response necessary

CVAG #2: Request that the Local Housing Trust Fund be capable of providing seed funding to local housing trusts to begin in beginning stages of trust development.

Response: It seems that CVAG may be asking for a deletion of the matching requirement. Unfortunately, the matching fund requirement is established by statute (See Health & Saf. Code Sec. 50843.5(a) and (c)) and cannot be changed by regulation. No change.

CVAG #2: Given the time and funding necessary to establish a housing trust, request consideration be given to reimbursement of local funds spent prior to funding becoming available through the LHTF Program.

Response: Health and Safety Code Section 50843.5 makes no provision for reimbursement of local funding expended prior to making a grant of state Local Housing Trust Fund monies. Moreover, reimbursement of local expenditures would seem contrary to the requirement for a dollar-for-dollar local match. No change.

Commenter: **City of Santa Rosa, Economic Development and Housing: (SREDH)**

SREDH #1: Regarding the application process (Sec. 7156(b)(2)), if funding requested exceeds funds available, the preference given to applications that meet the requirements of (b)(2)(A) and (B) should be reevaluated for the following reasons:

- Given the current housing market, creating homeownership units has increased in difficulty because qualified buyers are able to purchase market rate units without restrictions for a similar, if not lower sales price; and
- Given the budget constraints of municipalities, providing matching funds from sources other than residential Local Impact Fees can be extremely difficult. Local Impact Fees are down drastically and the ability of a municipality to contribute a match from its General Fund or other internal funding source is also greatly diminished.

Response: The preference criterion of proposed regulation section 7156(b)(2)(A) – the extent to which an applicant agrees to expend more than 65% of its program

funds for the purpose of providing downpayment assistance to first-time homebuyers – is required by Health and Safety Code Section 53545.9 (c)(1) (enacted by SB 586, Ch. 652, sec. 3, stats. of 2007). For this reason, HCD does not have the discretion to delete the criterion.

The preference criterion of proposed regulation section 7156(b)(2)(B) – the extent to which the applicant agrees to provide matching funds from sources other than residential local impact fees – is a specific requirement of statute (Health and Saf. Code Sec. 50843.5(a)(1)). For this reason, HCD does not have the discretion to delete the criterion.

No changes.

Commenter: Contra Costa County Department of Conservation & Development, Economic & Redevelopment Division (CCCERD)

CCCERD #1: It appears that throughout the regulations housing trust fund programs funded exclusively with Inclusionary Housing Ordinance in lieu fees are eligible to participate. However, Sec. 7154 could be interpreted to not allow housing trust funds with inclusionary in lieu fees as the sole source of revenue. Request that Sec. 7154(d) be modified to read as follows: “A Local Housing Trust Fund that is exclusively funded by any combination of HOME, CDBG, and redevelopment agency LMIHF funds, or other funds restricted for housing use, except for Local Impact Fees, shall not be eligible to receive Program Funds.

Response: HCD agrees with the thrust of the comment. However, rather than singling out local impact fees, HCD will amend the regulation to follow the statutory exclusion which is limited to state and federal funding sources.

Section 7154(d) will be amended to read as follows:

(d) A Local Housing Trust Fund that is exclusively funded by any combination of HOME, CDBG, and redevelopment agency LMIHF funds, or other state or federal funds restricted for housing use shall not be eligible to receive Program Funds.

CCRERD #2: Allow up to 10% of the state LHTF grant to be used for program administration.

Response: Health and Safety Code Section 50843.5(h) permits up to 5 percent of the funds appropriated to be used for the administration of the program. However, Section 50843.5 does not list local administrative costs as an eligible use of program funds. (See subdiv. (d)(1) of Health & Saf. Code Sec. 50843.5) Moreover, the current appropriation of funds to the state LHTF comes from Proposition 1C bond funds. These funds are subject to State General Obligation Bond Law (SGOBL). (See Health & Saf. Code Secs. 53545.9, 53547). Under SGOBL, bond funds may only be used for the cost of constructing or acquiring capital assets, costs incidentally and directly related thereto, and the costs of the state agency administering the bond program (see Gov. Code Sec. 16727). Consequently, it is HCD’s opinion that reimbursement of general local administrative costs is not an eligible use of bond funds. No change.

Commenter: **City of Fresno Housing and Community Development Division (FHCD)**

FHCD #1: The matching requirement of \$1 million is too high for newly formed housing trusts in smaller counties.

Response: The matching fund requirement is statutory (Health & Saf. Code Sec. 50843.5(a)). No change.

FHCD #2: The “on deposit” requirement is extremely burdensome.

Response: Health and Safety Code Section 50843.5(c) states: “No application shall be considered unless the department has received adequate documentation of the deposit in the local housing trust fund of the local match and the identity of the source of matching funds.” HCD recognizes that this requirement when coupled with the minimum matching requirement of \$1 million can be problematic. However, these are statutory requirements that cannot be waived by HCD. No change.

Commenter: **Tulare County Redevelopment Agency (TCRDA)**

TCRDA #1: There is a programmatic need for zero percent loans or even grants when an original program participant passes away and the heirs cannot refinance or sell. There also is a need to help existing program participants pay their property taxes and insurance. TCRDA requests that a separate fund for loans or grants to assist in emergencies or special circumstances be established.

Response: Under the state local housing trust fund statute, there is no prohibition on use of local housing trust fund moneys for these purposes. However, state statute limits use of the state funds to: predevelopment costs, acquisition, construction, or rehabilitation (Health & Saf. Code Sec. 50843.5(d)(1)). Therefore, HCD does not have the authority to permit these requested uses of state funds. No change.

Commenter: **Berkeley Housing Department (BHD)**

BHD #1: Regarding emphasis on downpayment assistance for first-time homebuyers – this is an extremely expensive proposition which demand additional subsidies to assure success. The subsidy for affordable rental housing is much lower. BHD supports using housing trust fund money to purchase foreclosed properties and transfer to nonprofit corporations to be used as rental units.

Response: HCD recognizes the challenges of providing first-time homebuyer assistance, particularly to very low income households; and HCD also recognizes that rental housing units often can be provided at a lower cost. However, the preference criterion of proposed regulation section 7156(b)(2)(A) – the extent to which an applicant agrees to expend more than 65% of its program funds for the

purpose of providing downpayment assistance to first-time homebuyers – is required by Health and Safety Code Section 53545.9 (c)(1) (enacted by SB 586, Ch. 652, sec. 3, stats. of 2007). For this reason, HCD does not have the discretion to delete the criterion. However, there is no prohibition on the use of state local housing trust fund money to purchase foreclosed properties and then using those properties as rental housing. No change.

Commenter: **Ventura County Housing Trust Fund (VCHTF)**

VCHTF #1: The \$1 million match for new trust funds should be lowered to \$500,000.

Response: The matching fund requirement is statutory (Health & Saf. Code Sec. 50843.5(a)). No change.

VCHTF #2: The 30-month from NOFA issuance encumbrance deadline is too short. It would be more realistic to have the time 30 months from the date of an agreement with HCD.

Response: It is important to note that there is a distinction between the deadline for HCD to encumber funds by entering into contracts with recipients, and the deadline for a local housing trust fund to enter into contracts with its recipients for actual expenditure of funds on a particular project.

Funds for the state Local Housing Trust Fund program have been made available from the \$100 million Affordable Housing Innovation Fund (AHIF) established by Proposition 1C (Health & Saf. Code Sec. 53545(a)(1)(F)). Any funds not encumbered for AHIF purposes “within 30 months of availability shall revert to the Self-Help Housing Fund ...” (ibid.). Under Proposition 46 and Proposition 1C, HCD has always interpreted “availability” to mean the issuance of the very first Notice of Funding Availability (NOFA) for the particular program. Funds are “encumbered” when HCD executes a conditional commitment contract with the recipient of funds. HCD anticipates issuing the first state LHTF NOFA in the fall of 2008. Consequently, any funds not under contract in the spring of 2011 will revert to the Self-Help Housing Fund. This disencumbrance deadline is statutory and cannot be changed by HCD.

More importantly however, funds for the state LHTF were “appropriated” by SB 586 effective October 13, 2007. These funds are not continuously appropriated, and must be encumbered within 36 months of appropriation, or the funds revert to the AHIF. Consequently, funds for both existing and newly-formed local housing trust funds must be encumbered no later than October 13, 2010, unless the Legislature extends the encumbrance deadline. If HCD issues NOFAs in the fall of 2008, potential applicants will then have approximately 24 months to assemble their matching funds and enter into a contract with HCD.

Dennis: SB 586, Ch. 652, sec. 3, stats. of 2007 requires the Department to set aside funding for a period 36 months from the date funds are made available for newly established housing trust funds that are in a county with a population of less than 425,000 persons. If the funds must be encumbered no later than October 13,

2010, then we will not be able to make available funds for the required 36 months???????

Finally, pursuant to Health and Safety Code Sec. 50843.5(i), recipients of funds will have 36 months from the date of their contract with HCD to make a loan commitment to a specific project or the funds will revert to HCD.

Since the above deadlines are statutory, HCD has no authority to waive or extend them. No change.

VCHTF #3: Paragraph 7152(b)(1)(A) requires that a charitable non-profit organization applying for funds must have a fund established by a formal relationship with public entities, such as a joint powers agreement. VCHTF requests that a stand-alone nonprofit organization with a trust fund not established by local legislation be an eligible applicant.

Response: Subdivision (b)(1) of Health and Safety Code Section 50843.5 provides that to be eligible for funding a housing trust must utilize a “public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership ..” Thus the statute does not permit use of State LHTF moneys for a fund established solely by a nonprofit organization.

The language of proposed regulations section 7152(b)(1)(A) is the same as the language used in the notices of funding availability used under the prior program established by Health and Safety Code Section 50843. Subdivision (d)(1) of Section 50843 reads the same as subdivision (b)(1) of Section 50843.5. The Legislature presumably knew how HCD had administered the program previously and how it had implemented the language of Section 50843(d)(1), yet it made no change in the language of the new program under Section 50843.5. Therefore, HCD assumes that the Legislature did not disagree with how HCD chose to implement the provisions of Section 50843(d)(1). HCD has chosen to continue this method of administrative implementation proposed regulations under Section 50843.5. No change.

VCHTF #4: The County has not yet received HCD approval of its latest housing element and requests that a “draft” housing element under review by HCD be acceptable.

Response: Having a housing element found to be in statutory compliance by HCD is a statutory application threshold requirement for eligibility to apply for state LHTF funds (Health & Saf. Code Sec. 50843.5(f)). Consequently HCD has no authority to make the requested change. No change.

VCHTF #5: Is it possible that an agreement could be developed between jurisdictions contributing to a Housing Trust Fund to allow for the sharing of credit toward attainment of their respective Regional Housing Needs Assessment (RHNA) goals. This would, of course, require a formal agreement between the parties and approval by the Department of Housing and Community Development.

Response: This type of arrangement would require an amendment of either or both Health and Safety Code Section 50843.5 and the Government Code Sections dealing with housing elements. No change.

Commenter: **City of Los Angeles Housing Department (LAHD)**

LAHD #1: LAHD has asked that the definition of “ongoing revenues” in Section 7151(s) be amended as follows: “Ongoing Revenues’ means a public source of revenue that is dedicated for an indefinite period (beyond annual appropriations); or other revenue that is has historically been dedicated for a minimum five year period and the source of that revenue has an income history which can reasonably support the level of proposed funding.”

According to LAHD, this change would help highlight and emphasize the commitment of a local jurisdiction in the recent past to its trust fund and towards the creation and preservation of affordable housing.

Response: HCD does not think that the proposed change is substantive. Moreover, the last phrase of the subsection captures the idea that the proposed revenue source has an income history. No change.

LAHD #2: With respect to proposed section 7156(b)(2) regarding rating criteria, LAHD urges that the proportion of funds between owner and renter housing be flexible. More specifically, LAHD states that the rating criteria should be reflective not only of the need of residents, but also of the ability of localities to respond to their respective needs. In the City of Los Angeles, 60% of residents are renters. LAHD would like to reduce or eliminate the rating factor relating to expenditure of more than 65% of funds for first-time homebuyer assistance, and possibly eliminate or reduce the weight of the factor relating to use of matching funds from sources other than impact fees.

Response: As noted in the ISOR, these funding priorities are established by statute (Health and Safety Code Section 53545.9(c)(1) and 50843.5(a)(1), respectively. Therefore, HCD does not have the authority to eliminate these weighting factors. Proposed regulation section 7156(b)(2) includes additional weighting factors in order to better direct funding to those applications that best meet the goals and objectives of the program. However, the criteria of assisting homebuyers and using matching funds from other than impact fees have been specifically required by the Legislature and are therefore entitled to be given precedence. No change.

LAHD #3: The previous program NOFA specifically outlined where funds would revert. LAHD would like to see unencumbered or unexpended funds revert to either the Multifamily Housing Program or the CalHome program for first-time homebuyer mortgage assistance.

Response: The deadlines for encumbering funds and expending funds are discussed under the response to VCHTF #2. If a recipient of state LHTF funds fails to commit those funds to a project within the required 36 months of receipt, those funds would be reclaimed by HCD to be granted to another local trust fund. Funds that have not been committed by HCD to a local housing trust fund within the required 36 months of appropriation would be returned to the special fund of origin, which in this case would be the Affordable Housing Innovation Fund (see

Health and Safety Code Sec. 53545.9). LHTF funds appropriated to HCD or residing in the Affordable Housing Innovation Fund that are not committed by HCD within the 30-month time frame required by Proposition 1C revert to the Self-Help Housing Fund created by Health and Safety Code Section 50697.1 to be used in the CalHome program (see Health and Saf. Code Sec. 53545(a)(1)(F)). HCD has no authority to alter these expenditure and reversion provisions, and the provisions do not require regulations for their implementation. Therefore, HCD has not made mention of these provisions in the proposed regulations. No change.

Commenter: **Housing Trust Fund of Santa Barbara County (HTFSBC)**

HTFSBC #1: HTFSBC has a line of credit from a local bank that has been committed indefinitely for affordable housing loans. HTFSBC asks if a private funding source with an indefinite time period would be eligible under the definition of “Ongoing Revenues” in Section 7151(s).

Response: Pursuant to the definition of “ongoing revenues” in Section 7151(s), a non-public source of revenue must be dedicated for a minimum of five years and the source must have an income history which can reasonably support the level of proposed funding. A private source of revenue with an indefinite time period would be construed by HCD as meeting the five-year minimum, so long as the income history reasonably demonstrated that funds likely would be available for a minimum of an additional five years. No change.

HTFSBC #2: Ranking criteria 7156(b)(2) (C) and (D) are not required statutory priorities and in HTFSBC’s opinion work at cross purposes with the statutory mandated preference for housing trust funds that agree to expend more than 65% of state funds for downpayment assistance to first-time homebuyers, particularly in high cost areas. “In fact, the result of inclusion of (C) and (D) ... may inadvertently act to discriminate against housing trust funds that operate in such high cost housing markets.

Response: The Legislature has made clear how it wants state LHTF moneys to be expended by:

- Requiring that at least 30 percent of funds be used to serve extremely low income families;
- Requiring that not more than 20 percent of funds be used to serve moderate income families; and
- Requiring a preference be given to housing trust funds that agrees to expend more than 65 percent of state funds for downpayment assistance to first-time homebuyers (referred to in this Response as the “FTHB preference”).

HCD is aware of how difficult it is to create homeowners out of lower income households; and HCD acknowledges that the FTHB preference may work to the disadvantage of high cost areas. However, this tension was established by the Legislature.

HCD could utilize an over-the-counter, first come-first serve method of distributing funds to existing LHTFs, such as it proposes to do for newly established LHTFs. However, such a process would not further the Legislature’s priorities. Moreover, **if** HCD limited the priorities solely to LHTFs providing FTHB programs, high cost areas likely would suffer. In addition, because of the difficulty of implementing FTHB programs, FTHB applicants may not absorb all the funding available, and HCD would be left without any other criteria to distinguish among the remaining applicants.

Therefore, in order to further the goals articulated by the Legislature – serving extremely low income families, limiting funding of moderate income families, promoting homeownership for lower income families, and providing more local funding – and in order to ensure that HCD has sufficient criteria to distinguish among applicants, HCD declines to delete preferences (C) and (D). No change.

Commenter: **Sacramento Housing and Redevelopment Agency (SHRA)**

SHRA has concerns over the proposed threshold requirement for expenditure of funds for extremely low income (“ELI”) housing (proposed regulations section 7153(b)) in conjunction with the funding preference for applications proposing to expend more than 65% of their funding on homeownership programs. “. . . many lower income households are not able to sustain the income needed to be homeowners.” By requiring that 30% of both the state LHTF funds and the local matching funds be expended for ELI housing, “the Department is effectively mandating policy and program preferences for local funding.” “We propose the Department prepare a set of guidelines specific to HTFs that target homeownership, with higher income targets and a set of guidelines specific to HTFs that target rental housing, with ELI income targets.”

Response: The requirement that 30% of both the state LHTF funds and the local matching funds be expended for extremely low income housing is a requirement of statute (Health & Saf. Code Sec. 50843.5(d)(2)). The preference for local housing trust funds proposing to expend more than 65% of their funds on ownership housing also is a requirement of statute (Health & Saf. Code Sec. 53545.9(c)(1)). Consequently, HCD does not have the authority to change these percentages or increase the income targets. HCD would also note that the 65% homeownership criterion is only a preference and is not a requirement. No change.

Commenter: **San Luis Obispo County Housing Trust Fund (SLOHTF)**

SLOHTF #1: This Proposition 1C program should be operated using guidelines. The ISOR “does not, however, establish that the new component is a different program from the original nor does it explain why the legislative directive to utilize guidelines does not apply for this component.

Response: Funds for this new state LHTF program were made available through SB 586 (Ch. 652, Sec. 3, Stats. of 2007) enacting Health and Safety Code Section 53545.9. Subdivision (c) of Section 53545.9 states that “The department shall make available the amount of (\$35,000,000) for the local housing trust fund

matching grant program established under Section 50843.5 (emphasis added).” These proposed regulations implement, interpret and make specific the program established under Section 50843.5. These regulations do not, and are not intended to, deal with the prior program established under Health and Safety Code Section 50843. Whereas the program established by Section 50843 was permitted to operate using guidelines (see subdivision (l) of Health & Saf. Code Sec. 50843), there is no exemption from regulations for the program established by Section 50843.5. No change.

SLOHTF #2: Amend section 7151(j) to read as follows:

“Homeownership Project’ means a project in which Program Funds will be used to assist in the acquisition, construction or rehabilitation of owner-occupied housing units in which the homeowner has an ownership interest sufficient to comply with ~~secure the deed restriction required by~~ subdivision (d)(3) of Health and Safety Code section 50843.5.

The regulation section 7151(j) definition of “homeownership project” conflicts with Health and Safety Code Section 50843.5(d)(3) in that the statute does not require the statutorily-prescribed deed restriction if it would conflict with the requirements of another public funding source or law.

Response: Regulations section 7155(h) makes clear that a deed restriction is not required if it would conflict with another public funding source or law. However, to eliminate any inconsistency or ambiguity, HCD will make the suggested change to the definition of “homeownership project” in Section 7151(j).

Amend section 7151(j) to read as follows:

(j) “Homeownership Project” means a project in which Program Funds will be used to assist in the acquisition, construction or rehabilitation of owner occupied housing units in which the homeowner has an ownership interest sufficient to ~~secure the deed restriction required by~~ comply with subdivision (d)(3) of Health & Safety Code section 50843.5.

SLOHTF #3: SLOHTF commends HCD on its definition of “on deposit.”

Response: HCD thanks the SLOHTF for this comment.

SLOHTF #4: The definition of “ongoing revenues” in section 7151(s) “should allow more flexibility when there is an established pattern of ongoing funding from multiple sources, some of which may be one time and others recurring.” Since incorporating five years ago SLOHTF has received revenues from various public and private sources that include both annual and multi-year appropriations. “Together these [SLOHTF’s sources] constitute ongoing revenues, but individually some may not under your proposed definition.” SLOHTF would like to have the record acknowledge that a funding pattern such as SLOHTF’s could constitute ongoing revenues for the purpose of the program.

Response: HCD agrees that a track record of funding would satisfy the purposes behind the on going revenue definition. However, to make this clear for the future, HCD proposes to amend the definition as follows:

Amend section 7151(s) to read as follows:

(s) "Ongoing Revenues" means a public source of revenue that is dedicated for an indefinite period (beyond annual appropriations); or other revenue that is either: (i) dedicated for a minimum five-year period and the source of that revenue has an income history which can reasonably support the level of proposed funding; or (ii) in the case of an existing local housing trust fund, the fund has at least a five-year income history from all nonpublic sources which could reasonably support the level of proposed funding.

SLOHTF #5: Subsections (a)(1)(A) and (b)(1)(A) of proposed regulation Section 7152 use the phrase "consist of" rather than the statutory word "utilize" with respect to a housing trust having a characteristic of "Utilization of a public or joint public and private fund..." as required by Health and Safety Code Section 50843.5((b)(1). SLOHTF contends that the use of different wording may create a conflict between the statute and regulations.

Response: Although HCD does not agree that the proposed wording substantively differs from the statute, it is not HCD's intent to alter the statutory requirement. Therefore, the wording of Section 7251(a)(1)(A) and (b)(1)(A) will be reworded as follows:

"It shall ~~consist of~~ utilize a public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership to receive specific revenue to address local housing needs.

SLOHTF #6: SLOHTF believes that proposed regulations section 7156(b)(2)(C) and (D) create an ambiguity as to whether a certain percentage of program funds and matching funds can each be used for the targeted income group. In addition, SLOHTF points out that paragraph (C) would give preference for expending more funds for both extremely low income families and very low income families, whereas the statute only gives preference to serving extremely low income families.

Response: HCD agrees with SLOHTF's comments and will revise these paragraphs to read as follows:

7156(b)(2)(C): "The extent to which the applicant agrees to expend more than 30 percent of the total amount of its Program Funds and Matching Funds to serve persons and families of Extremely Low Income ~~and Very Low Income.~~"

7156(b)(2)(D): "The extent to which the applicant agrees to expend less than 20 percent of the total amount of its Program Funds and Matching Funds to serve persons and families with incomes exceeding 120 percent of the area median income."

SLOHTF #7: If HCD wants to give an additional preference to applicants that commit to serve additional very low income households, SLOHTF recommends adding a new section that reads: "The extent to which the applicant agrees to expend funds to serve persons and families of Very Low Income."

Response: See response to HTFSBC #2 above. In HCD's opinion, the proposed preferences in Section 7156(b)(2) (A) – (E) are sufficient to: further legislative priorities, distinguish among applications, and not overly discriminate against high cost areas where creating homeownership opportunities.

SLOHTF #8: The statute does not require the use of trust deeds to secure program funds. Requiring a deed of trust to secure loans made with program funds precludes the program from financing manufactured homes on leased land. In addition, SLOHTF requests that matching funds be repaid to "legitimate successors in interest." SLOHTF recommends rewording section 7157(a) as follows:

"In order to protect the Program Funds awarded to a Grantee, the Grantee shall provide the Program Funds in the form of a loan evidenced by a promissory note the repayment of which shall be secured either by a deed of trust recorded ~~on~~ against the title to the real property or as the legal owner or a junior lienholder of a manufactured home being assisted with program Funds. The promissory note shall contain a special provision that repayment of the Program Funds shall be made to the Department in the event that the Grantee is no longer in operation."

Response: HCD agrees with the thrust of SLOHTF's comments regarding manufactured homes. There is no statutory limitation on use of program funds for manufactured homes, and there is no statutory requirement to use a trust deed. However, HCD disagrees with amending the regulation to allow matching funds to be paid to any entity other than HCD if a local trust is no longer in existence. HCD reviewed the history of the state local housing trust fund programs and found that both state programs (Health and Saf. Code Secs. 50843¹ and 50843.5) require that "loan repayments" accrue to HCD. Neither section makes a distinction between state program funds and the local match. Section 50843.5 states: "Loan repayments shall accrue to the grantee housing trust for use pursuant to this section. If the trust no longer exists, loan repayments shall accrue to the department for use in the program or its successor." (Health & Saf. Code Sec. 50843.5(e)).

HCD will amend section 7157(a) to read as follows:

"(a) In order to protect the Program Funds awarded to a Grantee, the Grantee shall provide the Program Funds in the form of a loan evidenced by a promissory note the repayment of which shall be secured either by a deed of trust recorded ~~on~~ against the title to the real property or a security interest in the manufactured home being assisted with program Funds. The promissory note shall contain a special provision that repayment shall be made to the Department in the event that the Grantee is no longer in operation."

¹ The Senate Appropriations Fiscal Committee analysis dated is provision August 6, 2002 for AB 1891 (enacted as Ch. 725, Stats. of 2002, creating the initial local housing trust fund program under Section 50843) contains the statement: "STAFF RECOMMENDS amending the bill to require the grantee to repay HCD, or have the loans repaid to HCD, if the recipient of these funds does not continue funding as specified."

SLOHTF #9: The requirement of subsection (c) of section 7157 that all ownership units have a deed restriction is in conflict with the law in that it is absolute whereas the statute has exceptions. There are many ways to ensure affordability or recapture of funds for ownership units. In addition, the section's clarity would be improved by using the defined term "Homeownership Project" rather than for sale housing. SLHOTF recommends amending this subsection to read as follows:

"Where Program Funds are used for a Homeownership Project ~~to acquire, construct or rehabilitation for sale housing~~ the Grantee shall record a deed restriction ~~in compliance with~~ or utilize other legal documents that satisfy the requirements of Health and Safety Code section 50843.5(d)(3)."

Response: In the absence of a contrary requirement of another public funding source or law, the Legislature has mandated that a deed restriction be recorded that complies with the specific provisions of Health and Safety Code Section 50843.5(d)(3). HCD agrees that subsection (c) of section 7157 as proposed may not clearly permit exceptions, as outlined in the statute. However, it is HCD's opinion that SLOHTF's language, when coupled with its comments, could be interpreted too broadly. The statute only allows exceptions from the deed restriction requirement where it would conflict with another public funding source or law. The statute does not allow the use of some other form of affordability restriction or recapture provision because a local trust fund thinks it is a better mechanism than a deed restriction.

HCD proposes to amend subsection (c) to read as follows:

"Where Program Funds are used ~~to acquire, construct or rehabilitation for sale housing~~ for a Homeownership Project the Grantee shall record a deed restriction in compliance with Health and Safety Code section 50843.5(d)(3) unless such a deed restriction would conflict with the requirements of law or another public funding source.